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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,257	10/19/2000	Philip W. Miller	38-21(15771)B	7102
7590	05/27/2005		EXAMINER	
Lawrence M. Lavin, Jr. MONSANTO COMPANY Mailzone E2NA 800 N. Lindbergh Boulevard St. Louis, MO 63167			TUNG, JOYCE	
			ART UNIT	PAPER NUMBER
			1637	
DATE MAILED: 05/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/692,257	Applicant(s) MILLER ET AL.	
	Examiner Joyce Tung	Art Unit 1637	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 26 January 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1 and 8-13.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

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The applicant's response filed January 26, 2005 to the office action has been entered.

Claims 1 and 8-13 are pending.

1. The rejection of claims 1 and 9 under 35 U.S.C. 102 (e) as being anticipated by Klann (6,068,974, issued May 30, 2005) is withdrawn because of the amendment.
2. Claims 1 and 8-13 remain rejected under 35 U.S.C. 101 (Utility), and 35 U.S.C. 112 first paragraph, as allegedly lacking a specific and substantial asserted utility or a well-established utility, since the response does not have a specific argument in terms of the rejection. Thus the rejection is maintained.
3. Claims 1 and 8-13 remain rejected under 35 U.S.C. 112, first paragraph (Enablement). Specifically, since the claims invention is not supported by either a specific and substantial asserted utility or a well-established utility, one skill in the art would not know how to use the claimed invention so that it would operate as intended without undue experimentation, since the response does not have a specific argument in terms of the rejection. Thus the rejection is maintained.
4. Claim 1 is rejection under 35 U.S.C. 112, first paragraph (Written Description), as containing subject matter which was not described in the specification in such way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, since the response does not have a specific argument in terms of the rejection. Thus the rejection is maintained).

Summary

5. No claims are allowable.

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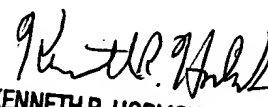
6. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Joyce Tung whose telephone number is (703) 305-7112. The examiner can normally be reached on Monday-Friday from 8:00 AM-4:30 PM.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached at (703) 308-1119 on Monday-Friday from 10:00 AM-6:00 PM.

Any inquiries of a general nature or relating to the status of this application should be directed to the Chemical/Matrix receptionist whose telephone number is (703) 308-0196.

8. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Art Unit 1637 via the PTO Fax Center located in Crystal Mall 1 using (703) 305-3014 or 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Joyce Tung J-T
May 20, 2005


KENNETH R. HORLICK, PH.D
PRIMARY EXAMINER
5/25/05